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8 Attorneys for Defendant Tampa Investment Group, LLC

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 EVAN WEAVER,

12 Plaintiff,

13 vs.

14 TAMPA INVESTMENT GROUP, LLC; and  
15 DOES 1 – 50, inclusive,

16 Defendants.

**FILED**

MAR 6 2012

RICHARD W. WIENING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

*[Handwritten signature]*

PSG

Case No. **CV12-01117**  
**NOTICE OF REMOVAL OF ACTION**  
**(28 U.S.C. § § 1332, 1441(b) (diversity))**

17  
18 **TO PLAINTIFF, HIS ATTORNEYS, AND THE ABOVE-CAPTIONED COURT:**

19 PLEASE TAKE NOTICE that Defendant Tampa Investment Group, LLC ("TIG") removes  
20 the above-captioned action from the Superior Court of the State of California, County of Santa  
21 Clara, where the action is now pending, to the United States District Court for the Northern District  
22 of California. This civil action is removed on the basis of diversity jurisdiction pursuant to 28  
23 U.S.C. § § 1332 and 1441.

24 **PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL**

25 1. On or about February 2, 2012, Plaintiff Evan Weaver ("Plaintiff") commenced a civil  
26 action in the Superior Court of the State of California, County of Santa Clara, entitled *Evan Weaver*  
27 *v. Tampa Investment Group, LLC; and Does 1 – 50, inclusive*, Case No. 112CV217949, by filing a  
28 Complaint.

1  
2       2. The Complaint asserts three causes of action: (1) breach of written agreement; (2)  
3 breach of the covenant of good faith and fair dealing; and (3) fraud. (Complaint at ¶¶ 18 – 34.)  
4 Plaintiff's Complaint arises following TIG's purported breach of an agreement to purchase  
5 1,348,259 shares of Plaintiff's Twitter stock. (Complaint at ¶¶ 6 – 16.) The operative facts are  
6 disputed, but taken as Plaintiff has alleged for purposes of this Notice of Removal.

7       3. On February 6, 2012, TIG was served with the Summons and Complaint, along with a  
8 Civil Lawsuit Notice, and an Alternative Dispute Resolution Information Sheet. A true and correct  
9 copy of the Summons, indicating it was served on February 6, 2012, is attached as Exhibit A. A  
10 true and correct copy of the Complaint is attached as Exhibit B. A true and correct copy of the Civil  
11 Lawsuit Notice is attached as Exhibit C. A true and correct copy of the Alternative Dispute  
12 Resolution Information Sheet is attached as Exhibit D. (Declaration of Robert Forlizzo Decl. at ¶  
13 2.)

14       4. This Notice of Removal is timely because TIG filed it within thirty days of when  
15 Plaintiff served TIG with the Summons and Complaint. (28 U.S.C. § 1446(b).)

16       5. TIG will give Plaintiff written notice as required by 28 U.S.C. § 1446(d) by served  
17 Plaintiff, through his counsel of record, via personal delivery with this Notice of Removal and all  
18 documents filed in support thereof and concurrently herewith on the date of filing of this Notice of  
19 Removal.

### 20                                   **SUBJECT MATTER JURISDICTION**

#### 21                                   **The Parties Are Citizens of Different States**

22       6. This is a civil action of which this Court has original jurisdiction under 28 U.S.C. §  
23 1332, and is one which may be removed to this Court by TIG pursuant to the provisions of 28  
24 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and the matter in  
25 controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. The operative facts are  
26 disputed, but taken as Plaintiff has alleged for purposes of this Notice of Removal.

27       7. Plaintiff is and at all relevant times was a citizen of California. (See Complaint, Exhibit  
28

1 B, at ¶ 1.)

2 8. TIG is a citizen of Delaware because it is a Delaware limited liability company.  
3 (Forlizzo Decl. at ¶ 3; Complaint, Exhibit B, at ¶ 2.) TIG has its principal place of business in  
4 Florida. (Forlizzo Decl. at ¶ 3.) TIG's headquarters and executive offices are located in Tampa,  
5 Florida. (Forlizzo Decl. at ¶ 3.) No member of TIG is a citizen of California. (Forlizzo Decl. at ¶  
6 3.)

7 9. The citizenship of unnamed "Doe" defendants sued under fictitious names is disregarded  
8 for purposes of removal. (28 U.S.C. § 1441(a).)

9 10. Complete diversity existed at the time the action in the Santa Clara Superior Court was  
10 commenced and as of the date of the filing this Notice of Removal.

11 **The Amount in Controversy Exceeds \$75,000.00**

12 11. In his Complaint, Plaintiff seeks compensatory damages in an amount to be proven at  
13 trial; reliance, lost opportunity, out of pocket, and other damages as is appropriate; and punitive  
14 damages. (Complaint, Exhibit B, at 7:13-22.) The operative facts are disputed, but taken as Plaintiff  
15 has alleged for purposes of this Notice of Removal.

16 12. As alleged, it is apparent that the amount Plaintiff claims exceeds \$75,000.00:

17 A. According to the Complaint, TIG allegedly agreed to purchase 1,348,259 shares of  
18 stock for \$20.85. (Complaint, Exhibit B, at ¶ 8.) According to the Complaint, Plaintiff claims he  
19 was entitled to receive \$28,111,200.15 as a result of the sale of his Twitter stock to TIG (\$20.85 x  
20 1,348,259). According to the Complaint, as a result of TIG's alleged breach of contract, Plaintiff  
21 resold all of his 1,348,259 shares to third parties and the sum total which Plaintiff received was  
22 "substantially less than he was entitled to receive from" TIG. (Complaint, Exhibit B, at ¶ 14.) If  
23 Plaintiff received merely 1.0% less as a result of the sale to third parties, his alleged damages would  
24 be \$281,112.00.

25 B. According to the Complaint, Plaintiff allegedly quit his employment with Twitter  
26 in reliance on TIG's promises to purchase the 1,348,259 shares of Twitter stock. (Complaint,  
27 Exhibit B, at ¶ 9.) Plaintiff claims he earned \$12,916.67 per month in salary and benefits.  
28

(Complaint, Exhibit B, at ¶ 9.) Plaintiff appears to have quit his employment with Twitter on August 15, 2011. (Declaration of David A. King at ¶ 2.) As alleged, Plaintiff has lost more than six (6) months salary between August 18, 2011, and March 6, 2012. By Plaintiff's allegations, it is apparent that Plaintiff would have lost at least \$77,500.02 in salary and benefits ( $\$12,916.67 \times 6 = \$77,500.02$ ).

C. According to the Complaint, Plaintiff allegedly lost 45,000.00 shares per month as a result of TIG's alleged breach of the promise to purchase the Twitter stock. (Complaint, Exhibit B, at ¶ 9.) If valued at \$20.85 per month (as set forth in the Complaint at ¶ 8), 45,000.00 shares of Twitter stock are worth \$938,250.00. Plaintiff appears to have quit his employment more than six (6) months ago. (King Decl. at ¶ 2.) Thus, as alleged, the value of the stock Plaintiff claims to have lost as a result of TIG's breach of contract exceeds \$5,629,500.00 ( $\$938,250.00 \times 6 = \$5,629,500.00$ ).

#### VENUE IS PROPER

13. Removal to this judicial district and division is proper under 28 U.S.C. § § 1441(a), 1446(a) because the state court action was originally pending in this judicial district – namely, the Superior Court of the State of California, County of Santa Clara.

#### NOTICE TO THE SANTA CLARA COUNTY SUPERIOR COURT

14. Pursuant to 28 U.S.C. § 1446(d), contemporaneously with the filing of this Notice of Removal, TIG is filing a true and correct copy of this Notice of Removal and all documents filed in support thereof with the clerk of the Superior Court of the State of California, Santa Clara County.

Dated: March 6, 2012

The King Law Group

By:

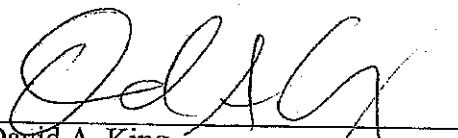
  
 David A. King  
 Attorney for Defendant Tampa  
 Investment Group, LLC

EXHIBIT A

# SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: TAMPA INVESTMENT GROUP, LLC.;  
(AVISO AL DEMANDADO): DOES 1-50, inclusive

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**FILED**

2012 FEB -2 A 10:55

Don't H. Yamasaki Clerk of the Superior Court  
County of Santa Clara, California

By: \_\_\_\_\_

Deputy Clerk

YOU ARE BEING SUED BY PLAINTIFF: EVAN WEAVER  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desahocar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California  
County of Santa Clara  
191 North First Street  
San Jose, CA 95113-1090

CASE NUMBER:  
(Número del Caso):

112CV217949

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Thomas H. Carlson (SBN 121367)

T: 415.956.2828 F: 415.956.6457

Rogers Joseph O'Donnell  
311 California Street, 4th Floor  
San Francisco, CA 94104

DATE:

(Fecha)

FEB -2 2012

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.2. ☐ as the person sued under the fictitious name of (specify):3. ☒ on behalf of (specify): Tampa Investment Group, LLC

under:

☐ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☒ other (specify): limited liability company☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.80 (authorized person)4. ☒ by personal delivery on (date): 2/6/12

SUMMONS

Legal  
Solutions  
& Plus

Page 1 of 1

Code of Civil Procedure §§ 412.20, 405

Form Adopted for Mandatory Use  
Judicial Council of California  
SUM-100 (Rev. July 1, 2008)

Date Served: 2/6/12  
Time Served

RT

EXHIBIT B



1 ROGERS JOSEPH O'DONNELL  
2 THOMAS H. CARLSON (State Bar No. 121367)  
3 311 California Street  
4 San Francisco, California 94104  
5 Telephone: 415.956.2828  
6 Facsimile: 415.956.6457  
7  
8 Attorneys for Plaintiff  
9 EVAN WEAVER

ENDORSED  
FILED

2012 FEB -2 A 10:55

David H. Yamasaki, Clerk of the Superior Court  
County of Santa Clara, California

By: T. Mai  
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SANTA CLARA

12 EVAN WEAVER,  
13 Plaintiff,

14 vs.

15 TAMPA INVESTMENT GROUP, LLC;  
16 and DOES 1-50, inclusive,  
17 Defendants.

Case No. 112CV217949

COMPLAINT FOR DAMAGES

Unlimited  
(83)

BY FAX

18 THE PARTIES

19 1. Plaintiff Evan Weaver ("Weaver") is an individual who is a resident of  
20 the State of California.

21 2. Weaver is informed and believes and alleges thereon that defendant  
22 Tampa Investment Group, LLC ("Tampa") is a Delaware limited liability company which  
23 does business in California. Tampa has contractually submitted to jurisdiction in California,  
24 to venue in this Court, and such jurisdiction and venue are also independently proper.

25 3. Plaintiff Weaver is presently unaware of the true names and capacities  
26 of defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these  
27 defendants (the "Doe Defendants") by such fictitious names. Weaver is informed and  
28 believes and alleges thereon that each Doe Defendant is responsible in some fashion for the  
wrongful conduct complained of herein and/or are the alter egos of defendant Tampa.

COMPLAINT FOR DAMAGES

Page 1

307767.2



**FACTUAL BACKGROUND**

4. Weaver was an early employee of Twitter, Inc. ("Twitter") who received significant options to purchase Twitter's common stock and, through the exercise of those options and otherwise, held shares of Twitter's common stock.

5. Weaver understands that defendant Tampa has long been interested in acquiring shares in Twitter, as have many other investors. Weaver further understands that Tampa had entered into share purchase agreements with other Twitter share or option holders, and knew of other investors who had done so, only to have Twitter or its assigns prevent the consummation of such share purchase agreements by exercising a contractual right of first refusal with respect to such shares.

6. In early 2011 Paul McCabe, a stock broker with Halcyon Cabot Partners, Ltd., "cold called" Weaver and, Weaver understands, a number of other (early) Twitter employees in order to solicit purchases of their Twitter stock holdings. Weaver advised McCabe that he was not then interested but that McCabe could call back in about six months. McCabe did so. In the context of those discussions Weaver was advised that the prospective purchaser had been trying to buy Twitter shares but had been frustrated by the fact that Twitter or its assigns had blocked the deals by exercising its right of first refusal. Weaver was eventually advised that defendant Tampa (or an entity related to Tampa) was willing to set the price at \$20.85 to help ensure that the right of first refusal would not be exercised by Twitter and that Tampa would thus in fact be able to acquire the shares.

7. Various communications then followed, many of which centered around the fact that Weaver would not be able to convey the shares to defendant Tampa if the right of first refusal were exercised. Those discussions formed part of basis of the language contained in the two agreements described hereafter.

8. The parties reached agreement on all material terms for the share purchase, including the price to be paid per share (\$20.85) and the total number of shares to be purchased (1,348,259). Two agreements were then executed to memorialize the deal. Specifically, one of these was a written agreement with a date of August 16, 2011 which was

1 executed by plaintiff Weaver and defendant Tampa (the "Letter Agreement"). (A true and  
2 correct copy of the Letter Agreement is attached hereto as Exhibit A and is incorporated  
3 herein by this reference as though fully set forth.) Another agreement describing the material  
4 terms (the exact number of shares to be sold, and the exact price to be paid) was also  
5 executed. This agreement had an issue date of August 16, 2011 as well, and was executed by  
6 Weaver, Tampa and the stock broker Halcyon Cabot Partners, Ltd. (the "Term Sheet"). (A  
7 true and correct copy of the Term Sheet is attached hereto as Exhibit B and is incorporated by  
8 this reference as though fully set forth.) The Term Sheet, which plaintiff Weaver signed after  
9 he signed the Letter Agreement, provided that Tampa was "to work in good faith and use best  
10 efforts to finalize and execute definitive documentation."

11 9. In reliance on defendant Tampa's promises, plaintiff Weaver left his job  
12 at Twitter for the sole reason that current employees of Twitter were prohibited from selling  
13 stock holdings of this size. In leaving Twitter, plaintiff Weaver gave up significant additional  
14 stock option vesting of 45,000 shares per month, and ceased receiving his monthly salary of  
15 \$12,916.67 and other benefits. Plaintiff Weaver would not have left Twitter when he did  
16 absent defendant Tampa's promises and commitments to buy his shares.

17 10. Plaintiff Weaver proceeded to perform under the written agreements.  
18 Specifically, but without limitation, plaintiff Weaver provided notice of the Tampa deal terms  
19 to Twitter as Twitter had a contractual right of first refusal. (Weaver was contractually  
20 obligated to provide this notice to Twitter under the Letter Agreement, and he had otherwise  
21 been instructed by Tampa to provide this notice.) Twitter ultimately notified plaintiff Weaver  
22 that the right of first refusal would not be exercised, thus clearing the way for defendant  
23 Tampa to proceed with the promised acquisition at the promised price. Plaintiff Weaver duly  
24 advised defendant Tampa of this fact.

25 11. In breach of the agreements defendant Tampa failed and refused to  
26 purchase plaintiff Weaver's Twitter stock at the contracted price. Defendant Tampa also took  
27 no steps, and exerted no efforts, to finalize and execute definitive documentation, to work in  
28 good faith, or to expedite the closing once the right of first refusal process expired without

1 exercise. Defendant Tampa also took no steps with respect to Twitter's stock transfer  
2 agreement.

3 12. When plaintiff Weaver was advised of Tampa's breach he was first told  
4 that Tampa had found a different seller of Twitter stock who was willing to sell at a lower  
5 price. Plaintiff was simultaneously advised that "another" group "within" Tampa "might" be  
6 "willing" to buy Weaver's stock at the contracted price. Eventually, on September 30, 2011,  
7 plaintiff Weaver was apologetically advised as follows:

8 "Sorry we will not be able to raise the funds for the deal. We  
9 have been unsuccessful with regard to our investors."

10 13. While this repudiation of Tampa's obligations was clear, in an excess of  
11 caution plaintiff Weaver sent defendant Tampa a formal demand for an adequate assurance of  
12 performance pursuant to Commercial Code §2609, the common law, and as was otherwise his  
13 right. Defendant did not provide any such assurance, let alone an adequate one, within the  
14 time period specified in the notice, which time period was reasonable under the  
15 circumstances. In fact, defendant specifically confirmed that it would not perform.

16 14. Plaintiff then exercised his right (and arguably his duty) to mitigate his  
17 damages by reselling all of his 1,348,259 shares to third parties. These resales were  
18 commercially reasonable in light of all the circumstances, and the sum total which was  
19 received by plaintiff Weaver was substantially less than he was entitled to receive from  
20 defendant Tampa. The net difference in proceeds to plaintiff Weaver between the actual sales  
21 and Tampa's contracted price is an exact sum which will be disclosed upon request during  
22 discovery but is not disclosed here for privacy reasons, and this amount constitutes just one  
23 portion of the damages plaintiff suffered at defendant's hands.

24 15. Plaintiff suffered other damages as a result of defendant Tampa's  
25 breach as well. Specifically, but without limitation, plaintiff suffered reliance and lost  
26 opportunity damages as he did not seek other opportunities to sell his shares during the time  
27 between the execution of the agreements and the time he was notified of defendant's breach.  
28 The market for Twitter shares decreased during that time period. He also would not have

1 terminated his employment at Twitter, and would have received additional stock option  
2 vesting, wages and other benefits had he remained.

3 16. At the time the written agreements were entered into, defendant Tampa  
4 represented to plaintiff that it had the requisite funds available. Plaintiff Weaver was later  
5 advised that Tampa did not in fact have the requisite funds available then, and plaintiff  
6 Weaver believes that Tampa also had no reasonable basis to believe that the funds would later  
7 become available when the time for performance came. Defendant fraudulently entered into  
8 the agreements without an intent to perform and/or without a reasonable basis to believe that  
9 they could perform.

10 17. Weaver reserves the right to amend this complaint to name additional  
11 individuals and entities as defendants, such as the members and/or owners of Tampa,  
12 depending on what is revealed in discovery and otherwise.

13 **FIRST CAUSE OF ACTION**  
14 **(Breach of Written Agreements)**

15 18. Plaintiff Weaver hereby incorporates by reference paragraphs 1 through  
16 17, inclusive, as though fully set forth herein.

17 19. As set forth above, defendant has breached the written agreements.

18 20. As a direct and proximate result of defendant's breach of the  
19 agreements, Weaver has suffered compensatory damages in a sum which equals the  
20 difference between the sums defendant promised to pay for the stock less the amount plaintiff  
21 actually received in mitigation. Plaintiff suffered additional reliance damages in the form of  
22 the wages and benefits he lost, and the additional stock option vesting which did not accrue,  
23 all in amounts to be proven at trial. Plaintiff suffered other out of pocket and lost opportunity  
24 costs in an amount to be proven at trial as well. Pursuant to Civil Code §§ 3287 and 3289,  
25 plaintiff is entitled to prejudgment interest at ten percent (10%) per annum on some or all of  
26 these sums.

27 21. Weaver has fully performed or offered to perform all his obligations  
28 under the agreements, except such obligations as were excused, waived, modified or

1 prevented by defendant's conduct or by the mutual agreement of the parties.

2 WHEREFORE, Weaver prays for relief as set forth below.

3 **SECOND CAUSE OF ACTION**  
4 **(Breach of the Covenant of Good Faith and Fair Dealing)**

5 22. Plaintiff Weaver hereby incorporates by reference paragraphs 1 through  
6 21, inclusive, as though fully set forth herein.

7 23. Inherent and implied by law and fact in the agreements is the implied  
8 covenant of good faith and fair dealing. Defendant has breached the implied covenant by  
9 acting and failing to act as described herein.

10 24. As a direct and proximate result of defendant's breach of the  
11 agreements, Weaver has suffered compensatory damages in a sum which equals the  
12 difference between the sums defendant promised to pay for the stock less the amount plaintiff  
13 actually received in mitigation. Plaintiff suffered additional reliance damages in the form of  
14 the wages and benefits he lost, and the additional stock option vesting which did not accrue,  
15 all in amounts to be proven at trial. Plaintiff suffered other out of pocket and lost opportunity  
16 costs in an amount to be proven at trial as well. Pursuant to Civil Code §§ 3287 and 3289,  
17 plaintiff is entitled to prejudgment interest at ten percent (10%) per annum on some or all of  
18 these sums.

19 25. Weaver has fully performed or offered to perform all of his obligations  
20 under the agreements, except such obligations as were excused, waived, modified or  
21 prevented by defendant's conduct or by mutual agreement of the parties.

22 WHEREFORE, Weaver prays for relief as set forth below.

23 **THIRD CAUSE OF ACTION**  
24 **(Fraud)**

25 26. Plaintiff Weaver hereby incorporates by reference paragraphs 1 through  
26 25, inclusive, as though fully set forth herein.

27 27. Defendant represented to Weaver that Tampa was financially ready,  
28 willing and able to perform under the agreements.

28 28. Defendant knew that this material representation was false when it was



1 made and/or that it had no reasonable basis to believe that Tampa would be ready to perform.  
 2 This representation was made with the intent to defraud.

3 29. Plaintiff Weaver did not know the representation was false and believed  
 4 it to be true, and he detrimentally relied upon this false representation. Had plaintiff Weaver  
 5 known the representation was false he would have sold to others in a more favorable market  
 6 environment, or would not have terminated his employment when he did.

7 30. As a proximate result of this misrepresentation, plaintiff Weaver has  
 8 been damaged in an amount to be proven at trial, and as otherwise set forth above.

9 34. In committing the acts alleged above, defendant has acted with malice,  
 10 oppression and fraud, and in conscious disregard of Weaver's rights. Plaintiff Weaver is thus  
 11 entitled to punitive damages in a sum according to proof.

12 WHEREFORE, Weaver prays for relief as set forth below.

13 PRAYER FOR RELIEF

- 14
- 15 1. For compensatory damages in an amount to be proven at trial;
  - 16 2. For such other and further reliance, lost opportunity, out of pocket and  
other damages as is appropriate;
  - 17 3. For interest and prejudgment interest thereon at the rate of ten percent  
18 (10%) per annum pursuant to Civil Code §§ 3287 and 3289;
  - 19 4. For punitive damages;
  - 20 5. For appropriate prejudgment remedies such as a writ of attachment, a  
right to attach order, and otherwise;
  - 21 6. For costs and expenses;
  - 22 7. For such other and further relief as is necessary and appropriate.

23 Dated: February 1, 2012

24 ROGERS JOSEPH O'DONNELL

25 By:   
 26

THOMAS H. CARLSON

27 Attorneys for Plaintiff  
 28 EVAN WEAVER

# EXHIBIT A



Tampa Investment Group, LLC  
2903 Rigby Lane  
Safety Harbor, FL 34695

August 16, 2011

Evan Weaver

Dear Evan:

We at Tampa Investment Group, LLC (the "Purchaser") are excited to proceed with the proposed purchase from you (the "Seller") of 1,348,259 shares of common stock (after giving effect to the 2-for-1 stock split which occurred on May 3, 2011) (the "Shares") of Twitter, Inc. (the "Company") for consideration of \$20.85 per share, or aggregate consideration of \$28,111,200.15 as further described below. The purpose of this letter (this "Letter") is to set forth certain understandings between Seller and Purchaser with respect to this proposed transaction.

#### COMMON STOCK PURCHASE

**Shares:** 1,348,259 shares common stock of the Company (after giving effect to the 2-for-1 stock split which occurred on May 3, 2011)

**Purchase Price:** \$28,111,200.15 of aggregate cash compensation (\$20.85 per share)

**Close:** Purchaser and Seller will use their reasonable commercial efforts to expedite the closing of the purchase and sale of the Shares as soon as practical once the right of first refusal process expires without exercise.

The parties will enter into and comply with the Company's standard stock transfer agreement or amend it in a manner that is mutually satisfactory and approved by the Company. Definitive agreements will contain provisions usual and customary for similar transactions, including appropriate representations and warranties and covenants. The parties will take reasonable steps to comply with any other Company requirements in respect of the purchase and sale of the Shares.

**Definitive Documentation:** Seller will provide to Purchaser, within seven (7) business days of the date of this Letter, all relevant documentation in connection with the Seller's acquisition of the Shares, including without limitation, any agreements or constituting documents of the Company containing restrictions on the resale or other transfer of the Shares, rights of first refusal or similar provisions (the "Shareholder Agreements").

**Notice to the Company:** Seller shall provide a notice for this offer to the Company immediately following the execution and delivery hereof (and not any sooner).

**Expenses:** Purchaser and Seller shall be responsible for their own legal fees and expenses.

**Confidentiality:** Purchaser and Seller will keep confidential and not disclose to any person the terms of this letter (with the exception of legal and financial advisors and the Company) without the express prior consent of the other party.

**Expiration:** This agreement if not executed by both parties expires on August 18, 2011.

Notwithstanding any terms herein to the contrary, no term or provision of this Letter (and no negotiations or oral representations made in connection with this transaction) shall constitute a commitment, agreement or binding agreement on the part of the Seller or Purchaser except for the provisions entitled "Expenses" and "Confidentiality" which shall be binding and survive the termination of this Letter, except to the extent agreed to in definitive and final documentation relating to the share purchase. For the avoidance of doubt, if the right of first refusal is exercised by the Company or its assigns, this Letter shall terminate and be rendered null and void.

[Remainder of page intentionally left blank]

Agreed and Accepted:

SELLER

By: 

Name: Evan Weaver, an individual

Date: 8/16/2011

Address: 943 Lombard St  
San Francisco, CA 94133

BUYER

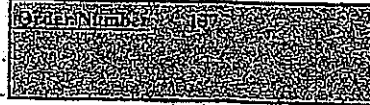
Tampa Investment Group, LLC

By: 

Name: Robert Forlizzo

Title: Managing Member

# EXHIBIT B



## Halcyon Cabot Partners, Ltd.

*Strictly Confidential — Not to be Disclosed or Distributed to Third Parties*

Summary of the Transaction	
Date Issued: 03/06/12 Amount: \$20.85	
Issuer Name: Twitter	Security Type: common
Purchaser name: Tampa Investment Group, LLC	
Amount / Number of Shares: 1,348,259 (after May 3, 2011 2:1 split)	
Price per Share: \$20.85	
Gross Amount: \$28,111,194.25 (\$20.85 per share)	
Less: HCP Fee: \$1,011,194.25 (\$0.75 per share)	
NETTED PROCEEDS: \$27,100,000.00	

Fee is to be paid to Halcyon Cabot Partners upon completion of the transaction described above. Seller pays fee to Halcyon Cabot Partners should the company exercise its right of first refusal or assign that right and the seller receives his funds on completion of such exercised right of first refusal transaction. Wire instructions to follow.

By Executing below, Buyer affirms their intent to work in good faith and use best efforts to finalize and execute definitive documentation.

Halcyon Cabot Partners shall (a) use its best efforts to facilitate the transaction and closing thereof, including, without limitation, timely delivery to the Issuer of the legal opinion, transfer fee, and parties' signature pages and exhibits, (b) arrange for and pay directly the costs for the legal opinion and any other securities laws compliance, (c) interface with the Issuer on any outstanding items and issues, and (d) keep Seller informed of status.

Halcyon Cabot Partners represents and warrants that it is a registered broker-dealer under Section 15 of the Securities Exchange Act of 1934, as amended, and has appropriate state licenses to provide the services and receive the fees hereunder.

This Agreement shall be governed by the laws of the State of California, without giving effect to its choice of law rules. The

(00070516.DOC)

exclusive venue for disputes arising out of or relating to this agreement shall be the state and federal courts in Santa Clara County, California, and the parties waive all defenses of inconvenient forum and submit to personal jurisdiction in California.

[Signature page follows]

In witness whereof, the parties have executed this fee agreement.

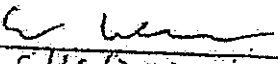
**FOR SELLER**

Name: Evan Weaver

Title:

Signed:

Date:

  
8/16/2011

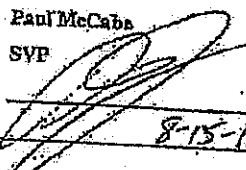
**FOR HCP**

Signed By:

Title:

Signed:

Date:

Paul McCabe  
SVP  
  
8-15-11

**FOR BUYER**

Name of Buyer: Tampa Investment Group, LLC

Signed By:

Title:

Signed:

Date:


  
Managing Member  
ROBERT A. COLLINS  
8/15/11



EXHIBIT C

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

ATTACHMENT CV-5012

CASE NUMBER: 112CV217949**PLEASE READ THIS ENTIRE FORM**

**PLAINTIFF** (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet, and a copy of this Civil Lawsuit Notice, and you must file written proof of such service.

**DEFENDANT** (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the Complaint, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the Summons and Complaint;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), [www.sccselfservice.org](http://www.sccselfservice.org) (Select "Civil") or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a Case Management Statement (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Honorable Mark Pierce Department: 9

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: JUN 19 2012 Time: 1:30 pm in Department: 9

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ In Department: \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed ADR Stipulation Form (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

EXHIBIT D

## SANTA CLARA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

### *What is ADR?*

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

### *What are the advantages of choosing ADR instead of litigation?*

ADR can have a number of advantages over litigation:

- ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

### *What are the main forms of ADR offered by the Court?*

Mediation is an informal, confidential, flexible and non-binding process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

EXHIBIT E

BLOG

TNW CONFERENCE - GET YOUR DISCOUNTED TICKETS TODAY

Login / register

# Twitter

PART OF THE NEXT WEB FAMILY

HOME ABOUT US TEAM CONTACT ADVERTISE

**Obama Touts Twitter Following**

**Microsoft to fix Windows Phone dev in Windows 8**

**Google Gets a New Unified Local Search for Desktop and Mobile**

Share 14

Channels

Apple  
Apps  
Daily Dose  
Design & Dev  
Entrepreneur  
Events  
Facebook  
Gadgets  
Google  
Insider  
LifeHacks  
Media  
Microsoft  
Mobile  
Sessions  
Shareables  
Social Media  
Twitter  
Video  
Editions  
Africa  
Asia  
Australia  
Canada  
Europe  
India  
Latin America  
Middle East  
UK  
United States  
Languages  
France  
Nederland  
Polka  
Portugal  
Romania  
Russia

## Evan Weaver, the man who helped save Twitter from its Fail Whale, has resigned.

18TH AUGUST 2011 by ZEE

Remember when the Fail Whale was so common place that "Fail Whale" would find a home on Twitter's trending topics?

At one point it really was that bad folks; and there were endless repetitive questions about whether Twitter would manage to resolve its uptime issues and, more importantly, whether it would be too late by the time it did.



Fortunately we now know the answer to the first question is 'yes' and the second 'no'.

One Twitter engineer is credited with being instrumental in helping Twitter leave its Fail Whale behind, his name is Evan Weaver, Twitter's "Other Evan".

Joining in May 2008, Twitter's co-founder Biz Stone introduced him to the world in a blog post in December of that year.

His words; full of acclaim for Weaver's involvement in working to resolve Twitter's performance problems:

*"Evan [Weaver] very quickly became a leader on our infrastructure and performance initiatives. Thanks to his contributions, technical vision, systems experience, and pragmatic optimization strategies Twitter's Engineering and Operations team has made significant progress moving away from early scaling problems."*









Biz continued:

*"Evan represents the unique brand of talent we hope to continue to attract at Twitter. None of the founders of Twitter have college degrees but Evan's Master's degree and combined study of philosophy, computer science, jazz, piano, poetry, and bioinformatics more than makes up for that fact. Plus, his strangely offbeat sense of humor regularly cracks everyone up. Please join us in belatedly welcoming Evan and thanking him for his enormous contributions to Twitter's recent and continued success."*

Today however, over three years on, Weaver officially announces his resignation from (and on) Twitter.

POPULAR COMMENTED LATEST

TODAY WEEK MONTH

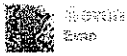
-  China Mobile Passes 15 Million iPhone Users
-  Android Now the Most Popular Mobile Browser
-  Spotify, We Need A Break. I'm Falling for Songza
-  Greek Artist Uses Path to Remember
-  Mopapp Raises €1.5m for Mobile Analytics Solution
-  Why Samsung Uses Twitter to Launch New Devices, Services
-  Singapore's Singtel buys Mobile Ad Firm Amobee
-  The Most Popular Sources of Content on Pinterest

**TNW The Next Web** on Facebook  
Like

73,223 people like The Next Web.



Email address here for news in your in



## Resigned; last day was Monday. Will be missing my Twitter people.

8 hours ago via web · 121 views · 12 replies · 1 retweet

We've contacted him for comment to hopefully learn more about his motivations for leaving the company. It's not often you hear someone state so boldly that they've resigned, let alone on the product they helped build.

With competition for engineers as competitive as its ever been, Weaver is bound to have a promising venture or company to move on to, the big question is what, and whether this says anything about the current internal operations at Twitter. In a year that's seen two co-founders leave the and one return to support a new CEO, the dynamics within the company will inevitably have changed...but for the better? We hope so.

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### ABOUT THE AUTHOR

Zee is a technology fiend, entrepreneur and CEO of The Next Web. Follow him on Twitter, Google+ Facebook or visit his own site at Zee.me

Follow @zee

### DISCUSSION

#### 7 COMMENTS & PINGBACKS

Comments are closed.

1



lelh79r said on August 18, 2011:

<http://www.supershops.org>

,m,m,m

Reply

### TRACKBACKS

1. Twitter VP of Engineering Mike Abbott leaves the company | Pro Blog Project says:  
October 14, 2011 at 3:42 am  
[...] was given credit for the lack of Fail Whales we've been seeing as of [...]
2. Twitter VP of Engineering Mike Abbott leaves the company | says:  
October 14, 2011 at 5:03 am  
[...] was given credit for the lack of Fail Whales we've been seeing as of [...]
3. Twitter VP of Engineering Mike Abbott leaves the company | Freedom Developers says:  
October 14, 2011 at 5:45 am  
[...] was given credit for the lack of Fail Whales we've been seeing as of [...]
4. Twitter hires on Oracle VP of Development as VP of Infrastructure Engineering | Tech News Aggregator says:  
November 8, 2011 at 2:07 am  
[...] an effort to improve its stability over the past two years, after continuous downtime made the 'fail whale' graphic a common sight. It looks like it is continuing on that track with this hire. Late last [...]



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as they happen  
Weekly  
Top stories

Daily  
Top stories

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Track your brand, website  
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